IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPEAL NO. 153 OF 1999.

Anil Vithoba Shinde ..Appellant.

vs.

The State of Maharashtra ..Respondent.

Shri Indrajeet Kulkarni,Avocate (appointed) for the appellant.
Shri D.P. Adsule, A.P.P. for the State.

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CORAM: V.M.KANADE,J.
DATED: 25 -01-2005.

ORAL JUDGMENT:

1. The appellant is convicted by the Additional Sessions Judge, Nasik, in Sessions Case No.163 of 1998 for having committed offences punishable under section 376, 451 and 506 of the Indian Penal Code and he is sentenced to suffer R.I. for 7 years, 1 year and 6 months respectively. The appellant is challenging the said judgment and order in this appeal.

2. The prosecution case in brief is that one Rohidas Zalte was residing at village Vanjarwadi, Taluka Nasik, along with his wife and children. He had two 3 minor daughters; Sunita, Sangita and Sarla and two minor sons; Amol and Sandip. On 2.9.1998, the complainant came home at about 5.30 p.m. and he and other family members had dinner and he along with

his minor daughters went to bed at about 9 p.m. At about 11 p.m. the accused entered the house of the complainant, lifted P.W.1- Sunita from her bed and took her to the corridor and he latched the bed room from outside and thereafter, he committed rape on the prosecutrix- Sunita. P.W.1- Sunita raised hue and cry and other family members woke up from their sleep due to noise of the prosecutrix. The prosecutrix had sustained abrasions and there was pain in her private part. Rohidas went to the Police Patil in the morning and thereafter complaint was lodged. Clothes of the prosecutrix were seized. Accused was arrested and his clothes and other articles were seized and he was referred to the Medical Officer. The specimen of pubic hair, blood and semen of the accused were collected. Investigation was completed and charge sheet was filed against the accused. Prosecution examined 10 witnesses. The trial Court on the basis of the evidence adduced by the parties convicted the accused for offences punishable under sections 376, 451 and 506 of the Indian Penal Code.

3. Learned Counsel appearing on behalf of the appellant-accused has taken me through the judgment and order of the trial Court and also oral and documentary evidence on record. He submitted that from the evidence of the Doctor it was crystal clear that the accused had not committed rape as there is no

penetration in the private part of the prosecutrix and hymen was in tact. He further submitted that the prosecution has not proved beyond reasonable doubt that prosecutrix was a minor girl below 12 years of age. He further submitted that delay in filing F.I.R. has not been satisfactorily explained by the prosecution. He submitted that a false complaint has been lodged at the instance of his rival Shri Ashok Katore and Shri Prabhakar Shinde.

4. The first question which falls for consideration before this Court is whether the prosecution has proved that the prosecutrx was a minor. In my view, there is ample evidence on record to prove that the prosecutrix was a minor. The prosecution has examined Ramesh Madhavrao Khare (P.W.3) who was an employee of the Municipal Council, Manmad. He has produced birth certificate of the prosecutrix which clearly shows that date of birth of the prosecutrix is 23.7.1986. The prosecution further examined P.W.4- Dr. Trimbak Chinkuji Chavan who has stated that he had conducted necessary tests and had taken x-rays of the prosecutrix and on the basis of the said evidence he has given his opinion that the prosecutrix Sunita was about 8 to 10 years of age. Thus, from this evidence it can be seen that the prosecution has proved beyond reasonable doubt that the prosecutrix was a minor girl within 12 years of

age.

5. The prosecution has thereafter examined the prosecutrix and she has stated that the accused lifted her from bed along with her chaddar and latched bed room from outside. Thereafter he threatened her that if she shouts he would kill her and thereafter he committed rape on her. The prosecutrix had stated that acccused had given forcible jerks to his waist. She stated that had she sustained abrasion on her face and she had pain in the private part. She further stated that her father applied coconut oil to her private part and thereafter a complaint was lodged. Her testimony has not been shaken in the cross-examination. The evidence of the prosecutrix has been corroborated by evidence of her father P.W.-2 Rohidas, who has also stated the sequence of events which had taken place on 2.7.1998. He stated that at about 11 p.m. he heard the shouts of her daughter. He thereafter realised that door of the bed room was latched from outside. He stated that he began to shout loudly. Hearing that noise accused ran away from the place. He has stated that his daughter Sunita narrated the incident to him. The evidence of the prosecutrix has been corroborated by P.W.2 - Rohidas. The ocular evidence of P.W. 1 and P.W.2 is further corroborated by the medical evidence. P.W.5- Dr. Kalpana Vyavahare, who was a doctor attached to

Civil Hospital, Nasik, has stated in her evidence that there were 6 injuries on the face of the prosecutrix and that specimen of blood, pubic hair, vaginal swab and nails of the prosecutrix were taken and she had referred examination of private part of the prosecutrix to Gynaecologist Mrs. Kawade (P.W.8). Mrs. Tawde has stated that she examined private part of the prosecutrix and gave her opinion that there was a valval penetration in the present case. She further stated in her evidence that hymen was found inflamed and fourchete was also found inflamed. She has stated that she could not perform vaginal examination because of the inflammation and tenderness of the private part. Thus, from the evidence of these 2 Doctors P.W.8 and P.W.5 it can be seen that medical evidence corroborates the case of the prosecutrix. I have, therefore, no hesitation in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the accused had committed the said offence.

6. In the circumstances, I do not see any reason to interfere with the findings recorded by the trial Court. Appeal is therefore, dismissed.